In accordance with this rule a corporation may compel a director to account to it for gains or secret profits resulting from contracts or dealings of third persons with the corporation.[4]

In such case, the director cannot interpose as his defense the fact that the transaction in which he made the secret profits was also of advantage to the corporation.[5] A director must likewise account for and surrender to the corporation any gifts, gratuities or bribes received by him for the purpose of influencing his official action in a matter pending before the board.[6]

Where, however, the profits are not secret nor illegal, there is no such obligation on the part of the director to account to the corporation. If, therefore, the director acts *bona fide* and honestly, and all the facts of the contract or transaction are known to the board of directors, who are informed of his connection with it, and such contract or transaction is advantageous to the corporation, he may retain such profits, provided, also, that his vote was not essential to complete the contract or transaction.[7] *A fortiori,* he may retain such profits if the stockholders are fully acquainted with all the facts and ratify the contract or transaction.[8]

The principal case can therefore be explained on the reasoning of the majority of the court,—that the arrangement between the plaintiff and defendant was contemplated by the stockholders when they ratified the agreement to give the defendant two representatives on the board of directors. In such case, the arrangement was not a breach of the duty which the plaintiff owed to his principal, the corporation; but it was rather within the purview of the original agreement.

N. I. S. G.

EQUITY JURISDICTION—MULTIPLICITY OF SUITS—The courts are not unanimous as to whether equity has jurisdiction to enjoin the prosecution of numerous actions arising out of the same tortious act,

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[4] Loudenslager v. Woodbury, *etc.,* Co., 56 N. J. E. 411 (1897); Coombs v. Barker, 31 Mont. 526 (1905); Perry v. Tuskaloosa, *etc.,* Co., 93 Ala. 364 (1890).

[5] Bird Coal & Iron Co. v. Humes, 157 Pa. 278 (1893); Parker v. Nickerson, *supra,* n. 3.

[6] Campbell v. Cypress Hill Cemetery, 41 N. Y. 34 (1865); *In re* Caerphilly Colliery Co. (Pearson's Case), L. R. 5 Ch. D. 336 (Eng. 1877); 2 Thompson on Corporations, §1237, *et seq.*

[7] Kregor v. Hollins, *supra;* Nathan v. Whitehill, 67 Hun. 398 (N. Y. 1893); Burland v. Earle, 85 L. T. 553 (Eng. 1902); Pneumatic Gas Co. v. Berry, 113 U. S. 322 (1885).

[8] *In re* British, *etc.,* Box Co., L. R. 17 Ch. D. 467 (Eng. 1881); Tenison v. Patton, 95 Tex. 284 (1902).

in order to prevent a multiplicity of suits. The case of *Davis* v. *Forrestal*[1] sustains the view that an injunction does not lie where the different plaintiffs have no community of interest in the subject-matter of the suits.

Among the first text writers to discuss this question was Mr. Pomeroy who drew the following classification wherein equity might interfere to prevent a multiplicity of suits.[2] (1) Where the injured party is obliged to bring a number of actions against the same wrong-doer, all growing out of the one wrongful act and involving similar questions of fact and law, *e. g.,* nuisance, waste and continued trespass. (2) Where one party institutes or is about to institute a number of actions against another, all depending upon the same legal questions and similar issues of fact, *e. g.,* where repeated actions of ejectment to recover the same tract of land have been brought. (3) Where a number of persons have separate and individual claims and rights of action against the same party, but all arise from some common cause, are governed by the same legal rule, and involve similar facts, and the whole matter might be settled in a single suit brought by all these persons uniting as co-plaintiffs, *e. g.,* the case of several owners of distinct parcels of land suing to enjoin the collection of an illegal tax which has been laid thereon. (4) Where one party claims some common right against a number of persons, the establishment of which would regularly require a separate action brought by him against each of these persons, or brought by each of them against him, he may procure the whole to be determined in one suit brought by himself against all the adverse claimants as co-defendants. Under "conclusions as to the third and fourth classes,"[3] the author states that in those suits, "which are strictly and technically 'bills of peace,' in order that a court of equity may grant the relief and thus exercise its jurisdiction on the ground of preventing a multiplicity of suits, there does and must exist among the individuals composing the numerous body, or between each of them and their single adversary, a common *right,* a community of interest in the *subject-matter* of the controversy, or a common *title* from which all their separate claims and all the questions at issue arise"; and then adds that the jurisdiction "has long been extended to other cases of the third and fourth classes, which are not technically 'bills of peace,' but 'are

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[1] 144 N. W. Rep. 423 (Minn. 1913). However, in refusing to take jurisdiction, the court considered the situation of the parties, their legal remedies in actions at law, the undoubted right of each to a jury trial, the limited number of suits necessary to settle the controversies involved, the different facts that would go to measure the damages between the different litigants even on plaintiff's showing, and the issues that might be anticipated from the defendants.

[2] 1 Pomeroy, Eq. Jurisp. (3rd Ed.), §245.

[3] 1 Pomeroy, Eq. Jurisp. (3rd Ed.), §§268, 269.

analogous to' or 'within the principle of' such bills"; and "the jurisdiction may and should be exercised, either on behalf of a numerous body of separate claimants against a single party, or on behalf of a single party against such a numerous body, although there is no 'common title,' nor 'community of right' or of 'interest in the subject-matter,' among these individuals, but where there is and because there is merely a community of interest among them in the questions of law and fact involved in the general controversy, or in the kind and form of relief demanded and obtained by or against each individual member of the numerous body."

These conclusions of Pomeroy are reviewed and controverted in the much-famed case of *Tribette* v. *Illinois Cent. R. R. Co.*,[4] in which Chief Justice Campbell says that the cases cited in support of Pomeroy's view establish the proposition that "where each of several may proceed or be proceeded against in equity, their joinder as plaintiffs or defendants in one suit is not objectionable." But this is quite different from the proposition that equity will grant relief merely because many actions at law arise out of the same transactions or occurrence, and depend on the same matters of law and fact. Possibly the best reason for equity refusing to take jurisdiction is that the parties would be deprived of the constitutional guarantee, trial by jury. Every man has the right to try his case with its issue clear and well defined, but if a consolidation can be had without interfering with his right, it should be granted in a proper case; if it cannot be so had, it should be denied.[5]

The opinion of Justice Harlan in *Osborne, et al.*, v. *Wisconsin Cent. R. R. Co.*[6] supports the text of Pomeroy, but it will be noted

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[4] 70 Miss. 182, 187 (1892). It is conceded that later Mississippi decisions have in effect departed from the Tribette Case, but they have not done so expressly. See in particular Hightower Crawford, *et al.*, v. Railroad Co., 83 Miss. 708, 717 (1903); Whitlock v. Railroad Co., 91 Miss. 779, 784 (1907); G. & S. I. R. Co. v. Barnes, 94 Miss. 484, 510 (1909). However, the case of Cumberland Telephone & Telegraph Co. v. Williamson, 57 So. Rep. 559, 563 (Miss. 1912), unqualifiedly affirms the decision in the Tribette Case, conceding it to be "the leading authority in the world upon the question of the jurisdiction of equity to prevent a multiplicity of suits." Mr. Pomeroy, in his third edition on Equity Jurisprudence, devotes a great deal of space and attention to the Tribette Case, and adds two new sections (251½ and 251¾) to that edition to set himself right in this matter. Although he does criticise some things said by Chief Justice Campbell in that case, yet, in the notes to his text, he admits that the decision was correct.

[5] Vandalia Coal Co. v. Lawson, 43 Ind. App. 226, 249 (1908).

[6] 43 Fed. Rep. 824, 827 (1890). In Wyman v. Bowman, 127 Fed. Rep. 257, 263 (1904), general passages occur which are perhaps broad enough to uphold Pomeroy's view, but the case may be distinguished on its facts. The case of Hale v. Allison, 188 U. S. 56 (1902), contains language in the nature of a *dictum* at the foot of page 78 tending to uphold the doctrine laid down by Pomeroy, at least in part, in some cases; but on the previous page the general rule as laid down by him is distinctly repudiated.

that in this case equity had jurisdiction for other reasons than to avoid a multiplicity of actions. Later decisions [7] in the federal courts have repudiated Pomeroy's doctrine, and cite with approval the leading Mississippi case.[8]

The better view and the one supported by the weight of authority is that of the principal case to the effect that equity will not take jurisdiction where there is no community of interest in the subject-matter.[9] The distinction between what does and what does not constitute a community of interest is well illustrated by the following quotation: "Two or more owners of mills propelled by water are interested in preventing an obstruction above that shall interfere with the downflow of the water, and may unite to restrain it or abate it as a nuisance; but they cannot hence unite in an action for damages, for, as to the injury suffered, there is no community of interest." [10] The "right" controverted must be of a peculiar character. It must be a common right, enjoyed in common by several persons, and in such a manner that the invasion of the right of one is really an invasion of the rights of all, such as a right of fishery.[11]

The trend of modern decisions seems to abandon the old and technical forms and for the sake of lessening litigation and saving time and expense, courts of equity will assume jurisdiction wherever they find that the consolidation will not confuse the issue, will not bring so many questions or varied interests into a case that they cannot be as well decided as if the cases were tried separately, and will not work a practical denial of a trial by jury.[12]

W. G. S.

LIBEL—PRIVILEGE—REPORT BY TRADE PROTECTION SOCIETY—An unusual decision has lately come down from the Court of Appeals of England [1] upon the question of privilege of communication as a defense in actions of libel and slander against mercantile agencies. The defendant was a mutual association of tradesmen, main-

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[7] Washington County, Neb., v. Williams, 111 Fed. Rep. 801, 812 (1901); Kansas City S. R. Co. v. Quigley, 181 Fed. Rep. 190, 196 (1910).

[8] Tribette v. Illinois Cent. R. Co., *supra*, n. 4.

[9] 1 High, Injunctions (4th Ed.), §65a; Southern Steel Co. v. Hopkins, 174 Ala. 465 (1911); Roanoke Guano Co. v. Saunders, 173 Ala. 347 (1911), overruling Southern Steel Co. v. Hopkins, 157 Ala. 175 (1908); Vandalia Coal Co. v. Lawson, *supra*, n. 5; Tribette v. Illinois Cent. R. Co., *supra*, n. 4; Ducktown v. Fain, 109 Tenn. 56 (1902); Illinois Steel Co. v. Shroder 133 Wis. 561 (1907).

[10] Bliss, Code Pl. (3rd Ed.), §76.

[11] 2 Story, Eq. Jurisp. (13th Ed.), §§854-856.

[12] Cases cited, *supra*, n. 9.

[1] Greenlands Lt'd v. Wilmshurst, *et al.*, 109 L. T. Rep. 487 (1913).